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OFFICE OF PETITIONS

In re Application of :
Jerome B. Zeldis :
Application No. 09/734,460 : DECISION ON PETITION
Filed: December 11, 2000 :
Attorney Docket No. 9516-018 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 27, 2006, to revive the above-identified application. In view of the statement that the deposit account contained sufficient funds to charge the issue fee at the time of submission of the Part B - Fee(s) Transmittal Form, the petition is also being treated as one requesting withdrawal of the holding of abandonment under 37 CFR 1.181.

The petition treated under 37 CFR 1.181 to withdraw the holding of abandonment is **DISMISSED**.

The petition under 37 CFR 1.137(b) is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before February 27, 2006, as required by the Notice of Allowance and Fee(s) Due, mailed November 25, 2005. Accordingly, the date of abandonment of this application is February 28, 2006.

DISCUSSION OF PETITION UNDER 37 CFR 1.181

The petition states that the attorney of record was informed by Examiner Azpuru that there were insufficient funds in the Jones Day deposit account 50-3013 to charge the issue fee. This fact was also stated as the reason in the Notice of Abandonment faxed to him by Examiner Azpuru. However, petitioner states that, on January 10, 2006, at the time of submission of the Part B - Fee(s) Transmittal Form, there was a balance of over \$500,000 in the Jones Day deposit account. In support of this statement, petitioner has submitted a copy of the Jones Day deposit account, which does in fact indicate a balance of over \$500,000.

In reviewing the Part B - Fee(s) Transmittal form submitted on January 10, 2006, it is noted that the deposit account number was

omitted therefrom. Further, the file record does not contain an authorization, which can be construed as an authorization to charge the issue fee or a general authorization to charge any fees due during the pendency of the application. The record fails to disclose that the Office at any time attempted to charge the issue fee. Therefore, this application became abandoned for failure to supply the deposit account number to charge the issue fee within the time for payment thereof.

DISCUSSION OF PETITION UNDER 37 CFR 1.137(b)

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of \$1,400 and the publication fee of \$300, (2) the petition fee of \$1,500; and (3) an adequate statement of unintentional delay.

The rule at 37 CFR 1.137(b) (3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." Since the statement appearing in the petition varies from the language required by 37 CFR 1.137(b) (3), the statement is being construed as the required statement. Petitioner must notify the Office if this is **not** a correct reading of the statement appearing in the petition.

Notice is made of the loss of entitlement to large entity status under 37 CFR 1.27(g) (2). Office records have been changed to reflect that this application is no longer entitled to small entity status. Accordingly, all future fees paid in this file must be paid at the large entity rate, absent notification from a proper party of a change in status. See 37 CFR 1.27(c) (2).

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218.

This application is being referred to Publishing Division for appropriate processing in accordance with this decision on petition.


Frances Hicks
Petitions Examiner
Office of Petitions